

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY THE COMMISSIONER OF REVENUE**

In the Matter of)
)
 B. H. W.) OAH No. 08-0488-PFD
) Agency No. 2008-025-2486
2007 Permanent Fund Dividend)

DECISION AND ORDER

I. Introduction

B. H. W. seeks to establish that he timely applied for a 2007 Permanent Fund Dividend (PFD). The Permanent Fund Dividend Division, having no timely application in its files, denied his application initially and at the informal appeal level. Mr. W. requested a formal hearing by correspondence.

The division’s denial is affirmed because the only application on file was submitted late, Mr. W. has not provided the proof of timely mailing or delivery required by law, and it is not possible to find that his late application came about because of a disability or military service. Even if Mr. W. is correct in asserting that he mailed an earlier application and it was lost, Department of Revenue regulations provide no discretion to grant a dividend to him.

II. Facts

B. W. is an Anchorage resident, now in his early eighties.¹ Apart from the question of timeliness of his application, he appears to have met the general eligibility requirements for the 2007 dividend.²

Mr. W. has not submitted a statement from a health care provider regarding disability. There is no evidence to find that Mr. W. is mentally or physically disabled, and he denies suffering from a disability that would entitle him to file a late application.³ Mr. W. was not serving on active duty as a member of the armed forces of the United States in 2007.⁴

¹ See Exhibit 1, p. 1 (2007 Adult Application).

² See Exhibit 1 (2007 Adult Application).

³ Exhibit 5, p. 5 (statement accompanying Request for Formal Hearing).

⁴ *Id.*, p. 1.

Mr. W. recalls mailing a paper 2007 PFD application early in the 2007 application period.⁵ There is no evidence that he used a certified or return receipt service.

On January 12, 2008, Mr. W. initialed a new, late application, which the division received on January 15, 2008.⁶ The division denied Mr. W.'s new application because it was not filed by the March 31, 2007 deadline and he did not qualify for any exception to the filing deadline. The division checked its records by social security number and name, and found that for 2007 the only application it had for Mr. W. was the one he submitted in January of 2008.⁷

By notice dated September 16, 2008, Mr. W. was given until October 17, 2008 to send any additional documents or correspondence for consideration in this formal appeal. The PFD Division was given the same deadline. Each party was given until October 27, 2008 to respond to any documents received from the other. The division filed a position statement with attached documents; Mr. W. filed nothing.

III. Discussion

In general, applications for PFDs must be received or postmarked between January 2 and March 31 of the dividend year.⁸ The only exceptions to the filing deadline allowed by law are for certain disabled people when their disability prevents timely filing, for certain children when their parents or guardians do not timely apply on their behalf, and for certain military members who were eligible for imminent danger or hostile fire pay during the application period.⁹ Since Mr. W. is not in one of these categories, the March 31 deadline was absolute for him.

Whether an application is considered timely delivered is established by a regulation, 15 AAC 23.103(g), the relevant portion of which reads:

It is an individual's responsibility to ensure that an application is timely delivered to the department. A paper application must be timely delivered to the department during normal business hours or delivered to the post office in sufficient time to be postmarked before the end of the application period. The department will deny an application postmarked after the application period, unless the individual provides the department with an official statement from the United States Postal Service or a foreign postal service that describes the specific circumstances under which the postal service incorrectly posted the individual's application or caused a delay in posting.

⁵ Exhibit 3, p. 2 (Request for Informal Appeal).

⁶ Exhibit 1. The dated initials are found at item 8.

⁷ Exhibit 6 (Affidavit of Peter Scott).

⁸ AS 43.23.011(a); 15 AAC 23.103(a).

⁹ AS 43.23.011(a); 15 AAC 23.103(a); 15 AAC 23.133.

Under 15 AAC 23.103(h), if an application was timely mailed but the division does not have the application on file, an applicant may reapply on or before December 31 of the dividend year if the “reapplication” is accompanied by a mailing receipt or a mailing return receipt showing the original application was timely.¹⁰

Mr. W. did not submit a reapplication by December 31 of the dividend year; his reapplication was completed and mailed in 2008. In any event, Mr. W. has not provided a mailing receipt or return receipt. His only remedy would be to get an official statement from the Postal Service showing that incorrect handling by the Postal Service caused the original application to become delayed or lost. Mr. W. has not provided a statement from the Postal Service describing such a circumstance.

Mr. W. has indicated that he mailed an application before the March 31, 2007 deadline. Assuming that he did timely submit his application, the Department of Revenue remains bound by its own regulations. Because the department does not have his application—whether it be an error by the sender, an error by the Postal Service, an error by the PFD Division, or some occurrence beyond the control of any of them¹¹—the dividend can be paid only if Mr. W. files a reapplication before the reapplication deadline and produces one of the specified kinds of evidence bringing him within an exception to the deadline. Mr. W. did not produce such evidence. The regulations do not permit any discretion in this situation and Mr. W.’s 2007 PFD application cannot be considered timely.

Government officials can only pay a PFD to applicants who qualify and either make a timely application or can show that they correctly took the steps to make a timely application. For 2007, Mr. W. did not make that showing, and therefore he does not fall among those to whom the officials can pay the PFD.

IV. Conclusion

Because Mr. W.’s only application on file was submitted after the deadline and he did not meet any of the exceptions to the filing deadline, his application is properly denied. This decision does not affect his status as a resident or his eligibility for 2008 and future dividends.

¹⁰ 15 AAC 23.103(h).

¹¹ Mr. W. could have, in effect, purchased insurance against such an event by sending his application by certified mail. He chose not to do so.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the application of B. H. W. for a 2007 Permanent Fund Dividend is AFFIRMED.

DATED this 5th day of December, 2008.

By: Signed
James T. Stanley
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 5th day of January, 2009.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

[This document has been modified to conform to technical standards for publication.]